

#### **§ 27.35**

as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The commissioner shall announce the name of each such bidder and the amount of the bid. The commissioner shall accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The commissioner will announce the amount of the high bid and the name of the successful bidder before the close of the sale.

(b) Relatives of the commissioner who may not bid at the foreclosure sale include parents, siblings, spouses and children. Related business entities which may not bid include entities or concerns whose relationship with the commissioner at the time the commissioner is designated is such that, directly or indirectly, one concern or individual formulates, directs, or controls the other concern; or has the power to formulate, direct, or control the other concern; or has the responsibility and authority either to prevent in the first instance, or promptly to correct, the offensive conduct of the other concern. Business concerns are also affiliates of each other when a third party is similarly situated with respect to both concerns.

(c) If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located.

#### **§ 27.35 Foreclosure costs.**

Pursuant to section 369C(5) of the Act (12 U.S.C. 3711(5)), a commission to the foreclosure commissioner for the conduct of the foreclosure will be paid in an amount to be determined by the General Counsel. A commission may be allowed to the commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

#### **§ 27.40 Disposition of sale proceeds.**

(a) The priority of the Secretary's lien shall be determined by the Federal

#### **24 CFR Subtitle A (4-1-03 Edition)**

first-in-time first-in-right rule. State laws affording priority to liens recorded after the mortgage are preempted.

(b) If there is more than one party holding a lien or assessment payable from sales proceeds, the claim of each party holding the same kind of lien or assessment will be given the relative priority to which it would be entitled under the law of the State in which the security property is located.

(c) The commissioner will keep such records as will permit the Secretary to verify the costs claimed under section 369C of the Act (12 U.S.C. 3711), and otherwise to audit the commissioner's disposition of the sale proceeds.

#### **§ 27.45 Transfer of title and possession.**

(a) If the Secretary is the successful bidder, the foreclosure commissioner shall issue a deed to the Secretary upon receipt of the amount needed to pay the costs listed in sections 369D (1) through (3) of the Act (12 U.S.C. 3712(1) through (3)). If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser upon receipt of the entire purchase price and execution by the Secretary and the purchaser of any use agreement referred to in § 27.20(e). Any covenants reflecting terms required by § 27.20 shall be contained in the commissioner's deed.

(b) Subject to any terms required to be agreed to by § 27.20, any commercial tenant and any residential tenant remaining in possession after the expiration of his or her lease or after the passage of one year, whichever event occurs first, shall be deemed a tenant at sufferance and may be evicted in accordance with applicable State or local law.

#### **§ 27.50 Management and disposition by the Secretary.**

When the Secretary is the purchaser of the security property, the Secretary shall manage and dispose of it in accordance with section 203 of the Housing and Community Development Amendments of 1978, as amended, 12 U.S.C. 1701z-11, and in accordance with 24 CFR part 290.